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Letter Ruling 83-99: Sales Made Outside Massachusetts Waters

November 28, 1983

You request a ruling as to the application of the Massachusetts sales tax to the sales of food and beverages aboard a fishing boat operated by ***** ("Company"). You also wish to know whether you should register as a vendor for sales tax purposes.

You state that the Company runs a daily fishing trip twenty-five to forty miles offshore. Most of the sales of food and beverages are made after the boat is outside of Massachusetts waters.

Any person selling tangible personal property the sales of which are taxable is a vendor. (G.L. c. 64H, § 1(18)). A vendor is not permitted to do business in the Commonwealth until a registration has been issued to him in accordance with the requirements of Chapter 62C, Section 67. (G.L. c. 64H, § 7).

Food or beverages prepared for human consumption and sold by a restaurant are subject to the Massachusetts sales tax. Any eating establishment which provides food or beverages for which a charge is made, whether the establishment is stationary or mobile, is a restaurant. (G.L. c. 64H, § 6(h)).

The sales tax applies to all retail sales not otherwise exempted of tangible personal property in the Commonwealth. (G.L. c. 64H, § 2). The seaward boundary of Massachusetts is a line three geographical miles from its coast line. (43 U.S.C. § 1312 (1970)).

Unless the activities upon which a tax is imposed are carried on within the territorial limits of a state, that state has no jurisdiction to impose the tax. James v. Dravo Contracting Co., 302 U.S. 134, 138 (1937).

Based on the foregoing, it is ruled that:

1. If the Company sells food and beverages within Massachusetts waters, it must register as a vendor, file returns, and pay sales taxes on such sales.
2. Sales of food and beverages which are made beyond the seaward boundary of Massachusetts are exempt from the sales tax.

Very truly yours,

/s/Ira A. Jackson

Ira A. Jackson
Commissioner of Revenue

IAJ:JES:mf

LR 83-99

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